



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

734 AGRICULTURE, LLC,)
)
Plaintiff,)
)
v.) C.A. No. _____
)
)
ARLON VALENCIA HOLDINGS)
LLC, 208 FLORIDA HOLDINGS,)
L.L.C., GLENN DUBIN 734)
INVESTORS GRAT, RIO VERDE)
VENTURES, LLC, RINYAMI,)
LLC, JAKE 86 LLC, ARC)
PARTNERS, LLC, ADK SOHO)
FUND LP, CRAIG M. LUCAS,)
MATTHEW BOTEIN, and)
WILLIAM C. REED II,)
)
Defendants,)
)
and)
)
734 INVESTORS, LLC,)
)
Nominal Defendant.)

VERIFIED COMPLAINT

Plaintiff 734 Agriculture, LLC, by and through its undersigned attorneys, alleges for its Verified Complaint against the above-captioned Defendants as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action pursuant to *6 Del. C. § 18-110* ("Section 18-110"), seeking expedited relief in the form of an Order: (A) declaring the

Written Consent of the Members of 734 Investors, LLC dated November 19, 2018 (the “Invalid Written Consent”), which purports to remove Plaintiff from its position as Managing Member of 734 Investors, LLC (“734 Investors” or the “Company”), null and void; and (B) declaring that Plaintiff remains the Managing Member of 734 Investors.

2. The Company was formed to invest and hold stock in a publicly-traded Florida corporation, Alico, Inc. (“Alico”). Under the Delaware law-governed Amended and Restated Limited Liability Company Operating Agreement for the Company (the “734 Investors Operating Agreement”), Plaintiff, as the Company’s Managing Member, has sole and exclusive authority to manage the Company’s affairs. That authority expressly includes voting the Company’s shares in Alico. Plaintiff’s control was a specifically negotiated provision of the 734 Investors Operating Agreement.

3. On November 11, 2018, Plaintiff, together with other Alico shareholders, delivered an action by written consent to Alico’s Corporate Secretary (the “Alico Shareholder Vote”). Plaintiff’s participation in the Alico Shareholder Vote was authorized by the Delaware law-governed 734 Investors Operating Agreement.

4. The Alico Shareholder Vote, among other things, removed four directors from Alico’s Board. Those directors are affiliated with, and influence or control, or are under the influence and control of, certain Defendants here.

5. Even before the Alico Shareholder Vote was taken, and certainly afterwards, the removed Alico Board members have engaged in a retaliatory campaign to undermine the will of Alico’s shareholders. That wrongful conduct is detailed below and is the subject of litigation in Florida. This case is about the Defendants’ decision to use a Delaware limited liability company to try to aid and abet the ousted Alico Board members’ efforts to entrench their seats.

6. Specifically, yesterday, November 19, 2018, Defendants delivered the Invalid Written Consent to Plaintiff. The Invalid Written Consent contains false accusations that Plaintiff has acted fraudulently and has committed willful misconduct in a claimed self-interested pursuit at odds with the Company’s best interests (apparently confusing board seats for individuals affiliated with Defendants on the Alico Board, which they have no contractual right to have, with 734 Investors’ best interests). Nothing could be further from the truth.

7. As set forth in detail below, the Invalid Written Consent is null and void because Defendants lacked proper grounds to remove Plaintiff from its position as Managing Member. Defendants’ attempt to remove Plaintiff is underpinned by baseless, bad faith character assassination that is plainly part of a

coordinated retaliation campaign to try and punish Plaintiff for Plaintiff's decision to exercise contractual rights clearly granted to it under the terms of the Company's Operating Agreement. Plaintiff seeks relief in this Court to put an end to Defendants' unlawful efforts.

THE PARTIES

8. Plaintiff is a Delaware limited liability company headquartered in New York, New York. Plaintiff's manager is Remy W. Tafelet.

9. Nominal Defendant 734 Investors is a Delaware limited liability company headquartered in New York, New York. 734 Investors was established in November 2013 and exists for purposes of making securities investments in non-party Alico, a NASDAQ-traded Florida corporation. Plaintiff has been 734 Investors' Managing Member since its inception.

10. Defendant Arlon Valencia Holdings LLC ("Arlon") is a member of 734 Investors and a signatory to the Invalid Written Consent. The Managing Principal of Arlon is Benjamin D. Fisherman, who is also a director of Alico. Arlon purports to have been named the Managing Member of 734 Investors pursuant to the Invalid Written Consent.

11. Defendant Glenn Dubin 734 Investor GRAT is a member of 734 Investors and a signatory to the Invalid Written Consent. On information and belief, Glenn Dubin 734 Investor GRAT is affiliated with Greg Eisner, an Alico

director recently removed from the Alico Board by a written consent of the holders of a majority of the Alico shares, including Plaintiff.

12. Defendant Rinyami is a member of 734 Investors and a signatory to the Invalid Written Consent. On information and belief, Rinyami is associated with Henry R. Slack, an Alico director recently removed from the Alico Board by a written consent of the holders of a majority of Alico shareholders, including Plaintiff.

13. Defendant ARC Partners is a member of 734 Investors, LLC and a signatory to the Invalid Written Consent. W. Andrew Krusen, Jr. is the Manager of ARC Partners, LLC, and was recently removed from the Alico Board by written consent of the holders of a majority of Alico shares, including Plaintiff.

14. Defendant 208 Florida Holdings, L.L.C. is a member of 734 Investors, LLC and a signatory to the Invalid Written Consent.

15. Defendant RIO Verde Ventures is a member of 734 Investors and a signatory to the Invalid Written Consent.

16. Defendant JAKE 86 LLC (f/k/a The Scott B. Kapnick 2000 Family Trust) is a member of 734 Investors and a signatory to the Invalid Written Consent.

17. Defendant ADK Soho Fund, LP is a member of 734 Investors and a signatory to the Invalid Written Consent.

18. Defendant Craig M. Lucas is a member of 734 Investors and a signatory to the Invalid Written Consent.

19. Defendant Matthew Botein is a member of 734 Investors and a signatory to the Invalid Written Consent.

20. Defendant William C. Reed III is a member of 734 Investors and a signatory to the Invalid Written Consent.

21. By the express terms of the 734 Investors Operating Agreement, Defendants are “passive investors,” and, apart from limited approval rights, have no right to “participate in the management or control of the Company, administer affairs for or in the name of the Company, sign any agreement or other document for or in the name of the Company or have any power [to] act for or on behalf of or to bind the Company.” 734 Investors Operating Agreement §§ 2.05, 2.06, 2.07(c). The sole and exclusive right to manage the Company’s affairs and vote its shares in Alico rests with Plaintiff. *Id.* § 2.01. The 734 Investors Operating Agreement is attached hereto as Exhibit A.

22. Defendants actions are direct violations of these Sections of the 734 Investors Operating Agreement and threaten Plaintiff with immediate injury by purporting to remove it from its contracted for role as Managing Member of 734 Investors.

JURISDICTION

23. This Court has subject matter jurisdiction pursuant to *6 Del. C.* § 18-110, *6 Del. C.* § 18-111, *10 Del. C.* §§ 341 and *10 Del. C.* § 6501.
24. This Court has personal jurisdiction over the Defendants pursuant to Section 10.04 (Governing Law; Venue) of the 734 Investors Operating Agreement, which provides in relevant part (emphasis in original):

THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF DELAWARE TO BE APPLIED. IN FURTHERANCE OF THE FOREGOING, THE INTERNAL LAW OF THE STATE OF DELAWARE WILL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS AGREEMENT, EVEN IF UNDER SUCH JURISDICTION'S CHOICE OF LAW OR CONFLICT OF LAW ANALYSIS, THE SUBSTANTIVE LAW OF SOME OTHER JURISDICTION WOULD ORDINARILY APPLY. The parties to this Agreement agree that jurisdiction and venue in any action brought by any party hereto pursuant to this Agreement shall exclusively and properly lie in the Delaware State Chancery Court located in Wilmington, Delaware, or (if such court denies jurisdiction) any federal or state court located in the State of Delaware. By execution and delivery of this Agreement each party hereto irrevocably submits to the jurisdiction of such courts for himself and in respect of his property with respect to such action. The parties hereto irrevocably agree that venue for such action would be proper in such court, and hereby waive any objection that such court is an improper or inconvenient forum for the resolution of such action. The parties further agree that the mailing by certified or registered mail, return receipt requested, of any process required by any such court shall constitute valid and lawful service of process

against them, without necessity for service by any other means provided by statute or rule of court. . . .

FACTUAL ALLEGATIONS

A. The Company

25. The Company was formed for the purpose of investing in and holding stock of Alico, a NASDAQ-traded Florida corporation. Alico is the largest citrus producer in the United States.

26. Through capital raised from the Company's members (including Plaintiff, the Managing Member), the Company invested in Alico and became Alico's largest shareholder. The Company has a 42.7% interest in Alico.

27. The 734 Investors Operating Agreement provides that "the powers of the Company shall be exercised solely by or under the authority of, and the business and affairs of the Company shall be managed solely under the direction of, a manager. The Members [*i.e.*, Defendants] hereby designate [Plaintiff] to act as the manager (within the meaning of [the Delaware LLC Act]) of the Company."

734 Investors Operating Agreement § 2.01. The 734 Investors Operating Agreement expressly states that, among other powers, Plaintiff has the sole power to vote 734 Investors' shares in Alico. *Id.* § 2.01(a).

28. Since November 27, 2012, Plaintiff has been managed and controlled by Mr. Trafelet, a fact known to Defendants when they agreed to appoint Plaintiff as Managing Member of 734 Investors. In addition to his control over 734

Investors' shares in Alico through his position as Plaintiff's manager, Mr. Trafelet controls another 13.3% of Alico's shares that he holds individually and through two wholly-controlled entities (together with Mr. Trafelet, the "Trafelet Shareholders"). This combination results in Mr. Trafelet controlling, in total, the voting power of 56% of Alico's shares.

B. Alico

29. In January 2017, in response to a languishing stock price, Alico embarked on an aggressive restructuring program to improve its operational efficiencies and optimize its return on assets. Around the same time, Mr. Trafelet was asked to and agreed to assume the responsibility of being Alico's President and CEO. Mr. Trafelet also sits on Alico's Board. The restructuring program, called the "Alico 2.0 Modernization Program," has been steered by Mr. Trafelet in his capacity as Alico's CEO.

30. Alico 2.0, implemented under Mr. Trafelet's stewardship, has been tremendously successful, and has transformed Alico into a more competitive and more sustainable company. The program transformed three legacy businesses into a single efficient enterprise and explored every aspect of Alico's citrus and ranch operations, including corporate and operational cost structures, grove costs, purchasing and procurement, non-performing and under-performing assets, professional fees, and human resources efficiency.

31. Alico 2.0 has included significant asset divestitures, the shutdown of businesses that were not profitable, the achievement of consistent and uniform field staffing and citrus grove operations, significant reduction in administrative expenses, and automation and simplification of administrative tasks through information technology investments. All of these changes will help Alico prosper as an important Florida corporation. The program has also included management changes, including bringing on a new President for a significant Alico subsidiary. Alico 2.0 also notably helped to mitigate a drop in share price following Hurricane Irma's devastation of Florida's citrus crops in the fall of 2017.

32. Alico 2.0's aggressive restructuring and cost-cutting measures have touched nearly every aspect of Alico except, until recently, the structure of Alico's Board.

C. Plaintiff Votes To Remove Four Alico Directors, Reduce The Size Of Alico's Board From Seven Directors To Five, And To Appoint Two New Directors To Fill The Empty Seats

33. Plaintiff and the Trafellet Shareholders concluded that continuing change was necessary to optimize, complement and complete the mission of Alico 2.0. Plaintiff and the Trafellet Shareholders believed that the Alico Shareholder Vote was necessary because the Board members' affiliations with Defendants at times have caused them to be more focused on those affiliations than on Alico and have distracted them from focusing on Alico. The Alico Board was also too large

for a company of Alico’s size and laden with unnecessary and expensive executive positions and an unnecessary Executive Committee.

34. On November 9, 2018, Mr. Trafelet informed four members of Alico’s Board of his intention, as controller of Plaintiff’s and the Trafelet Shareholders’ Alico share vote, to reduce the size of Alico’s Board from seven directors to five, and to appoint two new directors to fill the empty seats that would result from either the Board members’ resignations or, if resignations were not forthcoming, from an action by shareholder written consent.

35. Mr. Trafelet then asked, in his capacity as controller of Plaintiff’s and the Trafelet Shareholders’ Alico share vote, for the Board members to resign from the Company’s Board and at the same time to join a new Strategic Advisory Board so they could continue to advise and assist the Company’s success. The four Board members were asked to consider the request as necessary to help advance the Alico 2.0 strategy. Given the need to act quickly, the four Board members were asked to respond within two days.

36. The four Board members chose not to resign and Plaintiff, together with the Trafelet Shareholders, acted by written shareholder consent (the “Alico Shareholder Vote”) pursuant to Florida corporate law, the Alico bylaws, and the sole and exclusive power vested in Plaintiff to vote 734 Investors’ shares in Alico pursuant to the Delaware law-governed 734 Investors Operating Agreement.

37. The Shareholder Vote reduced the size of Alico’s Board from seven directors to five, removed four Board members from the Board (the “Removed Directors”), appointed two new, independent directors to fill the empty Board seats created by the Removed Directors’ removal, and made attendant changes to Alico’s bylaws to effectuate and protect the Alico Shareholder Vote.

38. As the Alico Shareholder Vote explained:

REASONS FOR TAKING THE ACTIONS

The aim of a smaller, reconstituted Board is to identify and execute on opportunities to improve operating performance of Alico and enhance shareholder value. The Majority Shareholders believe the Board was composed of capable, distinguished directors that served in good faith. A number of the directors, however, were designees of or otherwise affiliated with other shareholders of Alico, which complicated the Board’s functioning as a cohesive board of directors. We have elected two new highly qualified directors, Mr. [Joseph] Schenk and Mr. [John] Gregorits, with valuable and relevant business and financial experience who we believe will bring a fresh perspective to the Alico Board, and working together with the existing three directors, Messrs. [Remy] Trafelet, [Benjamin] Fishman and [Joseph] Sambuco, constitute a Board that from a size and composition perspective, is designed to manage effectively a company of the scale of Alico. The Majority Shareholders believe a smaller, reconstituted Board provides an effective governance framework for the Board to act decisively and efficiently to drive sustainable value creation at Alico.

39. Plaintiff believed, and continues to believe, that the time had come to right-size Alico’s Board so as to provide a governance framework for a leaner Board comprised of a majority of truly independent directors who could act more decisively, more quickly, and more efficiently. The Removed Directors are

affiliated with certain Defendants in this case, and at times have been more focused on their interests as Members of 734 Investors than their obligations to Alico or have been distracted by their particular concerns as Members of 734 Investors.

40. Plaintiff believed, and continues to believe, that the Alico Board was too large and laden with unnecessary and expensive executive positions and an unnecessary Executive Committee in light of Alico's size. Plaintiff therefore exercised its right, under the 734 Investors Operating Agreement, to right-size Alico's Board via the Alico Shareholder Vote and to provide an improved governance framework for the Board. Plaintiff wants the Alico Board to be able to act more decisively, more quickly, and more efficiently, and the Removed Directors, who are affiliated with certain Defendants here, were not working towards that same goal.

41. On information and belief, in the days following the Alico Shareholder Vote, other major Alico shareholders expressed support for it and the view that it was long overdue.

D. The Removed Directors And Defendants Begin A Campaign To Retaliate Against Plaintiff And Purport To Remove Plaintiff As The Company's Managing Member

42. In the lead up to and following the Alico Shareholder Vote, the Removed Directors, working together with the Defendants in this case, embarked

on a retaliation campaign designed to deprive Plaintiff of its negotiated right to vote 734 Investors' shares pursuant to the 734 Investors Operating Agreement.

43. In response to the Alico Shareholder Vote, the Removed Directors' role on the lame duck Alico Board became limited to setting a record date. (The record date is the date used to determine which shareholders are eligible to vote or give consent.) But the Removed Directors immediately made clear that they would use their positions to disrespect the will of the Alico shareholders and instead mount a campaign to obstruct and resist the Alico Shareholder Vote. On information and belief, Defendants here, including Defendants controlled by and affiliated with the Removed Directors, aided in that effort.

44. On November 12, 2018, instead of setting a record date, the Removed Directors resolved to create an "ad hoc committee" consisting of the conflicted Removed Directors, another member on the board, Benjamin D. Fishman, who controls Defendant Arlon, and another individual. The mandate of the "ad hoc committee" was to "evaluate" the Alico Shareholder Vote—a pointless exercise, given that Plaintiff and the Trafellet Shareholders constituted a clear 56% majority, which Defendants had repeatedly recognized in recent Board action and Alico's own SEC filings.

45. The conflicted Removed Directors further resolved to indemnify themselves, at Alico's expense, for decisions taken by the "ad hoc committee," and

silenced Alico and its officers and directors from communicating with investors and the public at large.

46. On Friday, November 16, 2018, Given the formation of the ad hoc committee consisting of the conflicted Removed Directors, and efforts by the Removed Directors to avoid setting the record date, Plaintiff initiated litigation against the Removed Directors in Florida seeking a declaration that the Alico Shareholder Vote is valid and binding, that the resolutions passed to create the ad hoc committee and otherwise obstruct the Alico Shareholder Vote are null and void, and that the Removed Directors are no longer members of the Alico Board.

47. The following Monday, November 19, 2018, the Removed Directors met again and resolved to reject the Alico Shareholder Vote. They also, while purporting to reject the Alico Shareholder Vote, paradoxically set a record date for the Alico Shareholder Vote for November 28, 2018 to complement their scheme of seizing control of 734 Investors. The Removed Directors also initiated a process to terminate Mr. Trafelet in his role as CEO, purportedly for cause, and shut off his access to Alico systems and email.

48. Also on November 19, 2018, Defendants, who as noted are affiliated and allied with the Removed Directors, delivered the Invalid Written Consent to Plaintiff, which purports to remove Plaintiff as the Company's Managing Member on the basis that Plaintiff "willfully breached the [734 Investors Operating

Agreement], committed multiple acts of fraud, gross negligence and/or willful misconduct in connection with the management of the Company, and breached their duties to the [Company’s] Members.” Invalid Written Consent at 3. The Invalid Written Consent is attached hereto as Exhibit B. Signatures on the Invalid Written Consent are dated as early as November 16, 2018—the date the Florida litigation challenging the Removed Directors’ conduct was filed. During Plaintiff’s tenure as the Company’s Managing Member in the five years leading up to the Invalid Written Consent, none of Defendants ever suggested that Plaintiff had engaged in misconduct.

49. In addition to purporting to remove Plaintiff as Managing Member, the Invalid Written Consent purports to appoint Defendant Arlon Valencia Holdings, LLC (“Arlon”) as Managing Member. Invalid Written Consent at 4. Defendant Arlon acts through Benjamin D. Fishman, who also sits on the Alico Board and has consistently voted with the Removed Directors. The Removed Directors have also purported to appoint Mr. Fishman as acting President of Alico in Mr. Trafelet’s place.

E. Defendants Lack Proper Grounds To Remove Plaintiff As The Company’s Managing Member

50. The Invalid Written Consent makes a number of spurious accusations, and appears to have been drafted in the grossly irresponsible hope of creating

misimpressions designed to divert attention from the absence of any legal or factual support for the accusations made.

51. For example:

a. The thrust of the Invalid Written Consent is that the Alico Shareholder Vote was a “Related Party Transaction” within the meaning of the 734 Investors Operating Agreement, and therefore required Defendants’ approval. Invalid Written Consent at 1-2 (citing 734 Investors Operating Agreement § 2.08). That is incorrect for a number of reasons, including the fact that the provision (intended to apply to transactions such as asset sales between Alico and 734 Agriculture) simply does not apply to a shareholder vote such as the Alico Shareholder Vote, and the more specific provision relating to Plaintiff’s right to vote the Company’s shares in 734 Investors states unequivocally that that is a power vested solely in Plaintiff in its capacity as Managing Member. 734 Investors Operating Agreement § 2.01(a). If a vote cast by 734 Investors was a Related Party Transaction, then every routine vote case since the investment was made would have required this approval. No such approval was ever sought and none was required as this was not a Related Party Transaction.

b. The Invalid Written Consent states in several places that Mr. Trafelet stands to gain personally from the Alico Shareholder Vote, Invalid

Written Consent at 2, but the only gain sought through the Alico Shareholder Vote is a streamlined governance structure for Alico that will hopefully lead to improved efficiency and an improved share price. An improved share price would benefit Plaintiff and Defendants *equally*.

c. The Invalid Written Consent states that Mr. Trafelet will achieve enhanced severance protections under certain preexisting compensation arrangements with Alico as a result of the Alico Shareholder Vote, Invalid Written Consent at 2. In any event, Plaintiff, through Mr. Trafelet, acted without regard (one way or the other) to whatever impact the Alico Shareholder Vote may have (if any) on Mr. Trafelet's employment arrangement with Alico.

d. The Invalid Written Consent states that the Alico Shareholder Vote was taken "in bad faith" and "as a result of personal grievances." Invalid Written Consent at 2. That is not the case. Plaintiff did not act due to personality conflicts. The Alico Shareholder Vote specifically acknowledged that the Removed Directors were "capable" and "distinguishable" and had "served in good faith." This matter only became personal after the fact, when the Removed Directors and Defendants here decided to respond to the Alico Shareholder Vote with a retaliation campaign and issue the Invalid Written Consent, which stripped to its core is

nothing more than reckless, and baseless, character assassination. It is the Removed Directors who have acted as a result of personal grievances.

e. The Invalid Written Consent also claims the Alico Shareholder Vote may result in a change of control under certain of Alico's credit agreements, Invalid Written Consent at 2, but does not address the practical reality that the lenders agreed to lend to Alico knowing that 734 Agriculture and indirectly Mr. Trafelet would be the controlling person, none of which would be changed by the Alico Shareholder Vote, and that Alico's performance has improved under Mr. Trafelet's stewardship. The Alico Shareholder Vote is aimed at furthering that improvement by streamlining Alico's governance structure.

f. The Invalid Written Consent also states, falsely, that Plaintiff breached the 734 Investors Operating Agreement by causing the Company to retain Allen & Overy LLP as counsel. Invalid Written Consent at 2. Mr. Trafelet and Plaintiff retained Allen & Overy LLP as counsel to advise them in their management capacity. The Company has not retained Allen & Overy LLP as counsel. This has been made clear several times to Defendants' counsel.

g. The Invalid Written Consent faults Mr. Trafelet for failing to disclose his plans to commence the Alico Shareholder Vote to the Alico

Board. Invalid Written Consent at 3. It is unclear what standing Defendants have to complain about the timing of Plaintiff’s discussions with the Alico Board about removing the Removed Directors and right-sizing the Board. In any event, the 734 Investors Operating Agreement makes clear that Plaintiff had no obligation to tell Defendants anything about Alico, 734 Investors Operating Agreement § 2.06, that Defendants are passive investors, *id.* § 2.07(c), and that Defendants waived any duties (including fiduciary duties) Plaintiff may have had to them at law or in equity, *id.* §§ 2.06(b), 8.01(a).

h. Like its “Related Party Transaction” accusation, the Invalid Written Consent seeks to shoehorn the Alico Shareholder Vote into a “material agreement, arrangement or understanding between Alico and Trafelet,” despite the fact that a shareholder vote is patently not an “agreement, arrangement or understanding” and if it were the provision would have been violated by every previous shareholder vote. Again, this contention ignores the provision that specifically addresses Plaintiff’s right to vote the Company’s Alico shares, which vests that right solely in Plaintiff, *id.* § 2.01(a).

i. Most spuriously, the Invalid Written Consent states that Mr. Trafelet made false public statements by failing to disclose “plans or proposals to change the number or term of directors of Alico” in September

and October of this year. Invalid Written Consent at 3. This utterly false and recklessly made allegation is made both generally and with respect to a recent Alico self-tender. Plaintiff had no crystallized “plans or proposals” in advance of the discussions in November 2018. After the Alico Shareholder Vote was then taken, it was disclosed on a Schedule 13D the following day. As for the self-tender, what Defendants say is false; Defendants knew about the self-tender, which was done to pay down Company debt, ahead of time.

52. Defendants may be angry that Plaintiff acted pursuant to the 734 Investors Operating Agreement to remove their affiliates from the Alico Board, but none of them had the right to be there, and Plaintiff had every right under the plain terms of the 734 Investors Operating Agreement—terms to which Defendants agreed—to vote the Company’s Alico shares in the way that it did. Only Defendant Arlon negotiated for the right to require Plaintiff to nominate one of its designees to the Alico Board, and Defendant Arlon continues to have representation on Alico’s Board. 734 Investors Operating Agreement § 2.11. None of the other Defendants negotiated for such a right, and none of the Removed Directors affiliated with Defendants has any right to serve on Alico’s Board.

53. Nevertheless, Defendants have made the decision to step out of their role as passive investors—a role they contracted for—and make a grab at power that does not belong to them, all in order to aid and abet the Removed Directors

effort to entrench themselves on the Alico Board. Through this action, Plaintiff seeks to end Defendants' unlawful conduct, nullify the Invalid Written Consent, and clarify once and for all that Plaintiff is the Managing Member of the Company and Defendants have no right to claim otherwise.

COUNT I

(DECLARATORY JUDGMENT PURSUANT TO *6 DEL. C.* § 18-110)

54. Plaintiff repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

55. The Invalid Written Consent does not comply with the 734 Investors Operating Agreement. None of the reasons cited by Defendants in the Invalid Written Consent amounts to a willful breach of the 734 Investors Operating Agreement or "fraud, gross negligence or willful misconduct."

56. Accordingly, the Invalid Written Consent was ineffective to remove Plaintiff as Managing Member of the Company.

WHEREFORE, for the reasons set forth above, Plaintiff respectfully requests an Order:

A. Declaring invalid the Invalid Written Consent, which purports to (1) remove Plaintiff as Managing Member of the Company and (2) appoint Defendant Arlon as Managing Member of the Company;

- B. Declaring that Plaintiff continues to be the Managing Member of the Company;
- C. Declaring that Plaintiff is entitled to indemnification pursuant to Article VIII of the 734 Investors Operating Agreement for attorneys' fees and costs incurred in connection with this action;
- D. Award to Plaintiff its costs, including attorneys' fees, incurred in bringing this action; and
- E. Granting such other and further relief as the Court may deem appropriate.

MORRIS, NICHOLS ARSHT &
TUNNELL LLP

/s/ John P. DiTomo

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LLC*

November 20, 2018



VERIFICATION

STATE OF GEORGIA)
COUNTY OF WORTH) ss:

I, Remy W. Trafelet, upon oath state that I am an authorized agent of 734 Agriculture, LLC, that I have read the foregoing Verified Complaint, and, to the best of my knowledge, the facts alleged therein insofar as they concern 734 Agriculture, LLC are true, and insofar as they concern all other persons are believed by me upon information and belief to be true.

734 Agriculture, LLC

By:

Remy W. Trafelet
Managing Member of 734
Agriculture, LLC

SWORN TO before me this 20th day of November 2018 by Remy Trafelet, who is personally known to me or has produced the following identification: New York Driver's License.

Notary Public, State of Georgia
My Commission Expires:

0126445-0000001 NY:33221857.11

